

REMARKS

I. Introduction

Claims 1 to 19 are currently pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

Applicant notes that the "Office Action Summary" does not include an acknowledgment of the claim of foreign priority and does not indicate whether all certified copies of the priority documents have been received. A claim of priority to Japanese Application No. 2000-250452 was made, *inter alia*, in the "Combined Declaration and Power of Attorney for Patent Application," filed on April 25, 2002, and a certified copy of Japanese Application No. 2000-250452 was filed on August 22, 2001. Applicant respectfully requests acknowledgment of the claim of foreign priority and of receipt of all certified copies of the priority documents with the next Office communication.

Applicant thanks the Examiner for considering the previously filed Information Disclosure Statement, PTO-1449 paper, and cited references.

II. Claim Objections

Claims 1, 5, 11, and 15 have been amended herein without prejudice to obviate the objections raised. Withdrawal of the objections are therefore respectfully requested.

III. Rejection of Claims 1 to 19 under 35 U.S.C. § 103(a)

Claims 1 to 19 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of PCT International Patent Application No. WO 99/14698 ("Peterson et al.") and U.S. Patent No. 6,343,273 ("Nahan et al."). Applicant respectfully submits that the combination of Peterson et al. and Nahan et al. does not render unpatentable any of the present claim for the following reasons.

Claims 1 and 11 relate to a method for central supply control of products. Claims 1 and 11 recite allocating inventories to dealers and/or importers, where the allocated inventories are subdivided into free inventories, non-free-inventories, and inventories allocated to ultimate consumers. Claims 1 and 11 recite

performing a search inquiry, where a sequence of the search is performed in accordance with at least one condition.

Claim 10 relates to a device for central supply control of products. Claim 10 recites allocated inventories subdivided into free inventories, non-free-inventories, and inventories allocated to ultimate consumers. Claim 10 recites a computer configured to perform a search inquiry, where a sequence of the search is performed in accordance with at least one condition.

Peterson et al. do not discuss a central supply control of products. Rather, Peterson et al. discuss agreements among vendors to expedite sales among vendors upon demand. Therefore, Peterson et al. do not disclose, or even suggest, a method for central supply control of products, where inventories are allocated so that at least some of the inventory allocated to one dealer or importer is free to another dealer or importer.

Furthermore, Peterson et al. do not discuss a search, where a sequence of the search is performed according to certain conditions.

Peterson et al. do not discuss a division of allocated inventories into free inventories, non-free inventories, and inventories allocated to consumers. The Office Action asserts that Peterson et al. disclose a division of inventories into free inventories and inventories allocated to consumers and that Nahan et al. disclose a category of non-free inventories.

As an initial matter, Nahan et al. should not have been used in this rejection because it is non-analogous art with respect to the claimed invention. In order for a reference to be used against a claim in a prior art rejection, the reference must either (1) be from the same field of endeavor as Applicant's invention, or (2) if not from the same field of endeavor, be reasonably pertinent to the problem with which the Applicant is concerned. See MPEP § 2141.01(a). The claimed subject matter pertains to a central supply control of products. Nahan et al. pertain to a network of many buyers and sellers (listing and buying dealers). Each dealer may list products for sale on the network. Other dealers may then buy those products. Nahan et al.'s system is a network marketplace. Nahan et al. do not pertain to products from a central supply, distributed amongst numerous vendors, and control of that distribution. Nahan et al. are therefore not of the same field of endeavor as that of the subject matter claimed. It is therefore respectfully submitted that the

combination of Peterson et al. and Nahan et al. does not render unpatentable claim 1.

Furthermore, the Office Action asserts that it would have been desirable to combine Peterson et al. and Nahan et al. to divide inventories into all three inventory categories “to accommodate all types of inventory, thereby generating more transactions.” However, Peterson et al. concern a process for facilitating quick access to a product inventory that is distributed amongst many vendors. Nahan et al. concern a system for selling products using a network marketplace. Peterson et al. and Nahan et al. are therefore within two entirely different fields of endeavor. A person of ordinary skill in the art seeking to modify the process of Peterson et al. would not look to the field of a network marketplace. For at least this reason, it is submitted that there is no suggestion in the prior art to combine Peterson et al. and Nahan et al.

Additionally, Peterson et al. relate to a process for expediting the access to distributed inventories. Accordingly, Peterson et al. discuss agreements among the vendors that provide for free inventories. Nahan et al. relate to a network marketplace; not a sharing of inventory. Accordingly, Nahan et al. discuss non-free inventories. Neither Peterson et al. nor Nahan et al. discloses, or even suggests, that it is desirable to sub-categorize inventory of a particular setting, such as for a sharing of inventory, into free and non-free inventory. For quick access to distributed inventory, Peterson et al. discuss free inventory; for a network marketplace setting, Nahan et al. discuss non-free inventory. One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, it is respectfully submitted that the Office Action’s assertions in this regard are insufficient since the Office must provide proper evidence of a motivation or suggestion for modifying a reference in view of another reference to provide the claimed subject matter.

It is therefore respectfully submitted that the combination of Peterson et al. and Nahan et al. does not render unpatentable claims 1, 10, and 11.

As for claims 2 to 9, which ultimately depend from claim 1, it is respectfully submitted that the combination of Peterson et al. and Nahan et al. does not render unpatentable these dependent claims for at least the same reasons given

above in support of claim 1. In re Fine, supra (any dependent claim that depends from a non-obvious independent claim is non-obvious).

As for claims 12 to 19, which ultimately depend from claim 11, it is respectfully submitted that the combination of Peterson et al. and Nahan et al. does not render unpatentable these dependent claims for at least the same reasons given above in support of claim 11. Id.

As further regards claims 2 and 12, the Office Action asserts that it would have been obvious, in light of the disclosure of Nahan et al. to revise non-free inventories to free inventories. As an initial matter, especially since Nahan et al. relates to a network marketplace, rather than a sharing of inventory, it would not have been desirable in Nahan et al., at any point in time, to revise inventory from non-free to free. Furthermore, neither Peterson et al. nor Nahan et al. discloses, or even suggests, a revision of inventory from non-free to free. And neither Peterson et al., nor Nahan et al. teach or suggest a revision of inventory from any one category to another category after a predefined period of time. In support of its obviousness finding, the Office Action offers no evidence whatsoever, but only conclusory hindsight, reconstruction and speculation, which does not constitute evidence that will support a proper obviousness finding. Unsupported assertions are not evidence as to why a person having ordinary skill in the art would be motivated to modify a reference in view of another reference to provide the claimed subject matter of the claims. For this additional reason, it is respectfully submitted that the combination of Peterson et al. and Nahan et al. does not render unpatentable claims 2 and 12.

As further regards claims 6 and 16, with respect to a search sequence that depends upon product age, the Office Action asserts that it is common in the art to move oldest products first and that it would have been obvious to modify Peterson et al. so that a search for products would be in accordance with a sequence of oldest products first. However, it would not have been obvious for a buyer to search first for older products. Especially since Peterson et al. discuss agreements among individual vendors, rather than a central supply, it would not have been obvious to modify Peterson et al.'s process so that vendors search first for older products. Thus, Peterson et al. do not disclose, or even suggest, searching an older product first. For this additional reason, it is respectfully submitted that the combination of Peterson et al. and Nahan et al. does not render unpatentable claims 6 and 16.

IV. Conclusion

In light of the foregoing, it is respectfully submitted that all pending claims 1 to 19 are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

Respectfully submitted,

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